

AMENDMENT UNDER 37 C.F.R. § 1.111

U.S. Appln. No.: 09/988,702

REMARKS

Review and reconsideration on the merits are respectfully requested. Claims 69-91 remain pending in the application, as the Examiner has noted.

On the Office Action summary page, claims 86 and 89 are indicated as having been objected to. In the text of the Office Action, no rejections of claims 86 or 89 are set forth. Applicants have amended claims 86 and 89 by placing them in independent form. Thus, allowance of these two claims is in order and is respectfully requested.

Applicants have also elected to place dependent claims 72, 75 and 77 in independent form. No prior art rejections were asserted against these claims, and any other rejections against these claims are respectfully submitted to have been overcome based on the reasons set forth herein.

Turning to the text of the Office Action, at page 2, claims 70-78, 84 and 85 stand rejected under 35 USC § 112, second paragraph, as alleging being indefinite. The Examiner appears to object to the phrase "at least about" which appears in dependent claim 70 and in dependent claim 84. Dependent claims 71 and 85 depend from claims 70 and 84, respectively, and therefore were rejected as well. However, claims 72-78 appear to have been included in the statement of rejection by inadvertent oversight, since each of those claims depend from claim 69, not claim 70. Therefore, Applicants construe the rejection as covering claims 70-71 and 84-85.

In response to this rejection, claims 70 and 84 have been amended as shown herein, so that the amount of acephate present is "about 97% by weight or more". As amended, any

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perceived ground of ambiguity has been removed from claims 70 and 84, without reduction in scope. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

At page 3 of the Office Action, claim 80 stands rejected under 35 USC § 101 as allegedly claiming the same invention as that of claim 2 of prior U.S. Patent 6,337,323. This is a “same invention” type double patenting rejection.

Applicants respectfully traverse this rejection. As the Examiner notes in the paragraph describing the legal standards on page 3 of the Office Action, a “same invention” type of double patenting rejection is only proper where the two claims at issue are of identical scope. The *Vogel* case cited by the Examiner makes this point clear.

In the present situation, claim 2 of Applicants’ prior ‘323 patent indicates that the pellets can contain “up to about 3% by weight of a vinylpyrrolidone-vinyl acetate copolymer as a processing aid.”

In contrast, claim 80 of the present application specifies that the same copolymer is present in an amount from “about 0.5 to about 3% by weight”. Thus, the two claims have a different scope, because the literal terms of claim 2 of the prior ‘323 patent permit amounts of the polymeric processing aid to be below about 0.5%.

In view of the foregoing, reconsideration and withdrawal of the rejection under 35 USC § 101 is respectfully requested.

At page 3 of the Office Action, claims 69-72 and 74-82 stand rejected for obviousness-type double patenting over claims 1-2 of U.S. Patent 6,337,323.

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For purposes of advancing prosecution, Applicants are submitting herewith a Terminal Disclaimer which will overcome this ground of rejection. Entry of the Terminal Disclaimer is respectfully requested.

At page 4 of the Office Action, claims 69-71, 73, 74, 76, 78, 83-85, 87, 88 and 91 stand rejected under 35 USC § 102(b) as allegedly being anticipated by Chan et al, U.S. Patent 5,464,623.

Claims 69 and 83 are independent, and the following remarks will focus on them.

In each of these claims, the moisture content is specified as a maximum of about 0.5% by weight and about 0.3% by weight, respectively. Applicants respectfully submit that when the prior '623 patent is considered as a whole, it does not fairly teach or suggest pellets having such low moisture content, much less the advantages which are obtained in accordance with this feature of the present invention.

The Examiner points out that column 5 of the '623 patent mentions that residual solvent can be removed by vacuum and/or air drying the extruded product, or by application of direct or indirect heat, if necessary. Further, in Example 3 in column 7, the text of the '623 patent indicates that the extruded product "could be dried to remove the moisture". However, none of these locations describe that the '623 patentee ever measured the actual moisture content in those pellet compositions. In fact, during the extrusion process used in the '623 patent, 3-25% of a solvent is added to form a consistency of damp sandy loam, which is then extruded. Given these high amounts of solvent in comparison to the amounts employed during the techniques described in the present specification to form the pellets of the present invention, it is reasonable to surmise

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that the moisture amounts would be higher than in Applicants' pellets, and if any happened to fall within the presently claimed moisture content it would be fortuitous. Such potential happenstance is not the standard for anticipation.

Applicants discovered that by carefully controlling the moisture content of the pellets, the improved advantages of the present invention could be obtained. For example, claim 83 expressly recites that the pellets remain substantially free-flowing without caking or compaction under drum storage conditions. Caking and compaction were a significant problem with prior acephate pellets. Again, the Examiner is kindly referred to the supporting data in the present specification, including Example 8 at pages 49-54.

Moreover, claims 69 and 83 call for a polymeric processing aid in combination with the low moisture content. Applicants respectfully submit that claim 83 should be interpreted as requiring the presence of a processing aid in some amount, with the maximum being about 3% by weight. The language has been clarified by amendments shown above. The claimed polymeric processing aid, when interpreted in light of the underlying specification as required, is distinguishable from the type of surfactant which the '623 patent appears to mention at column 6, lines 25-27, referenced by the Examiner. See, for example, the discussion in the paragraph bridging pages 9-10 of the present specification.

For the foregoing reasons, Applicants respectfully submit that neither claim 69 nor claim 83 is anticipated by the '623 patent. Accordingly, those claims and their dependent claims should be found patentable, and this rejection withdrawn.

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At pages 4-5 of the Office Action, claims 83, 90 and 91 stand rejected under 35 USC 102(b) as allegedly being anticipated by Cummings, U.S. Patent 5,352,674.

Applicants respectfully traverse this rejection.

Again, it is believed that the amendment to claim 83 clarifies that the polymeric processing aid is a component of the claimed pellet. The upper limit is about 3% by weight, as stated in the claim. As such, it is not believed that the '674 patent anticipates claim 83 since the Examiner appears to agree that the claimed polymeric processing aids are not set forth in the '674 patent, much less in combination with the low moisture content as specified.

For the foregoing reasons, reconsideration and withdrawal of the rejection based on the '674 patent is respectfully requested.

Applicants note that claims 72, 75, 77 and 79-82 were not rejected based on prior art. Accordingly, in the event either of the prior art rejections is maintained in the next action, Applicants would respectfully appreciate obtaining an indication that those claims are allowed, in addition to claims 86 and 89 as discussed above.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

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Respectfully submitted,

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